IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Revision No. 79 of 2001.

Date of decision:13.7.2007.

Ramesh .. ..Petitioner

Versus

State of H.P. .. ..Respondent

Coram:

The Hon'ble Mr. Justice Deepak Gupta, J.

Whether approved for reporting ?

For the Petitioner: Mr.Bimal Gupta, Advocate.

For respondent-2: Mr.R.M.Bisht, Dy.A.G.

Deepak Gupta, J.(oral)

This Revision is directed against the order of acquittal dated 24.6.2000 passed by the learned Chief Judicial Magistrate, Sirmour District at Nahan in Criminal Case No.7/2 of 2000/94.

The allegations giving rise to the present petition are that on 21.11.1993 the present petitioner alongwith his sister Veena Devi and two other persons Lekh Ram and Kamla Devi had gone to Police Station, Pachhad to lodge a report against one Prithi Singh resident of Village Madhon with regard to some incident of beating. The case of the petitioner is that the accused Iqbal Khan was posted as Muharar Head Constable in the police station. It is further alleged that the accused took Veena Devi to his residential quarter for interrogation. He asked the prosecutrix to un-dress herself and on this pretext it is alleged that he did indecent acts with her with an intention to outrage her

modesty. It is further alleged that the prosecutrix started weeping and thereafter came out and then her brother, the present petitioner, asked her as to what had happened. She reported the entire incident to him. The accused thereafter apologized and begged mercy and therefore the petitioner and his sister did not lodge any complaint.

According to the petitioner, more than 4 months thereafter, on 18.3.1994 when he had gone to Pachhad in connection with registration of some deed the accused threatened him and told him that he has been forced to apologize on 21.11.1993 and that he would settle the scores with the petitioner and his sister. It is only thereafter that the petitioner made a complaint Ext.PB and on the basis of this FIR Ext.PW-6/A was lodged.

The case went to trial and the learned trial Court on the basis of the evidence has come to the conclusion that the case against the accused is not proved. Aggrieved against the order of acquittal this petition has been filed.

Shri Bimal Gupta, learned counsel for the petitioner has contended that keeping in view the circumstances of the case and especially keeping in view the fact that a police official is involved, the delay in lodging the FIR was not fatal to the prosecution. He further submits that on the evidence on record a case against the accused was clearly made out.

There is delay of more than four and a half months in lodging the FIR. The explanation given for the delay is that since on the previous date the accused had apologized, the petitioner and his sister thought it fit not to proceed with the matter. It was only after the accused threatened the present petitioner on 18.3.1994 that a report was lodged. I am not in agreement with the petitioner that reasonable explanation has been given for the delay. There is no allegation or evidence led to show that the accused had threatened the petitioner or his sister with dire consequences. However, to satisfy my judicial conscience I have gone through the entire evidence of the case.

On going through the evidence I find that the two witnesses Lekh Ram and Kamla Devi who admittedly had accompanied the petitioner and his sister to the police station on 21.11.1993 have not at all supported the version of the petitioner. According to these witnesses nothing of the type alleged in the complaint occurred. Both these witnesses are closely related to the petitioner. There is no reason to disbelieve their versions especially when there is undue delay in lodging the FIR.

It is also surprising to note that in the present case the prosecutrix had filed an application for compounding the matter with the accused. This application was later on withdrawn. The prosecutrix

till date has not challenged the order of acquittal of the accused. It may be that the complaint was originally filed by the present petitioner but it was the prosecutrix who was aggrieved by the order of the acquittal because the alleged offence took place against her and not against the petitioner.

Keeping all the above facts in view I find no merit in the petition which is accordingly dismissed.

July 13, 2007. **(Deepak Gupta),**
PV **Judge**